IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.MC.No. 3230 of 2007()

ST.1073/2006 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOCHI

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PETITIONER/ACCUSED:

CAPTAIN JAMES JOSEPH, MANAGING DIRECTOR,
M/S.KOTTAYAM GOLDEN MARINE (P) LTD,
THAZHATHAGADI P.O.,KOTTAYAM.

BY ADV. SRI.WILSON URMESE

RESPONDENTS:

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1. M/S.KERALA HARDWARES, PRABATH JEWS STRET
FLOWER JUNCTION, ERNAKULAM, KOCHI-682 305,
REPRESENTED BY ITS MANAING PARTNER
SRI.V.UMESH KAMATH.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3230 of 2007

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Dated this the 19th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The complainant has alleged that three cheques for a total amount of Rs. 1 lakh were issued towards partial settlement of the outstanding liability after giving credit to an amount of Rs.1,94,100/- paid during the pendency of the proceedings under the Companies Act before this Court. The complainant has a definite case that three cheques were issued subsequent to the company proceedings towards partial discharge of the balance liability.

2. According to the petitioner, the cheques were not issued for the discharge of any legally enforceable debt/liability. They were handed over only as security. The petitioner has a further case that such cheques were signed blank cheques, which have been misutilised by the complainant to file this vexatious prosecution against the petitioner. The petitioner further points out that even earlier he had filed a complaint before the police alleging the fact that these blank signed cheques were available with the complainant. It is prayed, in these circumstances, that powers under Section 482

Cr.P.C. may be invoked and the proceedings initiated against the petitioner may be quashed.

3. The complaint clearly shows that due credit has been given to payments given during the pendency of the company case. It is the case of the petitioner that the cheques were issued subsequent to the prosecution for discharge of the partial payment of the outstanding liability. The petitioner has a case that the cheques were blank signed cheques issued as security and were not issued for the due discharge of any legally enforceable debt/liability. The truth and acceptability or otherwise of that contention cannot obviously be decided by this Court in this proceedingsn under Section 482 Cr.P.C. The presumption under Section 139 of the N.I. Act also stares at the petitioner. It is for the petitioner to appear before the learned Magistrate and raise his contention that the cheques were issued not for the discharge of any legally enforceable debt/liability, but were issued only as security even prior to the filing of the company proceedings. Such contentions will certainly have to be considered by the learned Magistrate on merits, on the basis of the materials available before the learned Magistrate. I find absolutely no justification in the prayer for invocation of the powers under Section 482 Cr.P.C.

4. This Crl.M.C. is accordingly dismissed. I may hasten to observe that I have not intended to express any opinion on merits about the contentions of the petitioner. I choose to dismiss the petition only for the reason that there is no justification for the invocation of the powers under Section 482 Cr.P.C.

(R. BASANT)
Judge

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